

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
ORANGEBURG DIVISION**

James Franklin Gilbert, #321212	)	
	)	
Plaintiff,	)	Civil Action No. 5:14-cv-01987-JMC
	)	
v.	)	<b>ORDER</b>
	)	
Captain J. Tyson,	)	
	)	
	)	
Defendant.	)	
	)	

Plaintiff, proceeding *pro se*, brought this action seeking relief pursuant to 42 U.S.C. § 1983. This matter is before the court for review of the Magistrate Judge's Report and Recommendation (ECF No. 53), filed on July 27, 2015, recommending that Plaintiff's action (ECF No. 1) be dismissed with prejudice for failure to prosecute.

The Magistrate Judge's Report is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge makes only a recommendation to this court, which has no presumptive weight—the responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objections are made, and the court may accept, reject, or modify, in whole or in part, the Magistrate Judge's recommendation or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

The Magistrate Judge entered an order in this case on May 8, 2015, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), advising Plaintiff of the importance of him filing an adequate response to Defendant's Motion for Summary Judgment (ECF No. 45) and of the need

for him to file an adequate response. (ECF No. 47.) Plaintiff failed to respond. The Magistrate Judge then directed the Plaintiff to advise the court whether he wishes to continue with this case and to file a response by July 15, 2015. (ECF No. 50.) Plaintiff again failed to respond.

The Magistrate Judge thus dismissed plaintiff's action pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. (ECF No. 53 at 1–2 (considering “(1) the degree of plaintiff's responsibility in failing to respond; (2) the amount of prejudice to the defendant; (3) the history of the plaintiff in proceeding in a dilatory manner; and, (4) the existence of less drastic sanctions other than dismissal,” as instructed by *Davis v. Williams*, 588 F.2d 69, 70 (4th Cir. 1978)).) The Magistrate Judge explained that in light of Plaintiff's repeated failures to respond, “it appears to the court that [Plaintiff] does not oppose Defendant Tyson's Motion and wishes to abandon this action.” (*Id.* at 1.)

Upon review of the Report and the record in this case, the court agrees with the Magistrate Judge's conclusion in this regard. This court therefore **ADOPTS** the Magistrate Judge's Report and Recommendation (ECF No. 53). It is therefore **ORDERED** that Plaintiff's action (ECF No. 1) be **DISMISSED** for failure to prosecute and Defendant's Motion for Summary Judgment (ECF No. 45) be rendered moot.

**IT IS SO ORDERED.**

A handwritten signature in black ink, reading "J. Michelle Childs". The signature is written in a cursive, flowing style.

United States District Judge

October 16, 2015  
Columbia, South Carolina